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3:04-CV-01367 PINNOCK V. RIVERA MOTEL

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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY: [Signature] DEPUTY

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

MANTIC ASHANTI'S CAUSE, SUING  
ON BEHALF OF THEODORE A.  
PINNOCK AND ITS MEMBERS; and  
THEODORE A. PINNOCK, An  
Individual,

Plaintiffs,

v.

RIVERA MOTEL; SWAN HEI YEN  
d.b.a. RIVERA MOTEL; SWAN HEI  
YEN; And DOES 1 THROUGH 10,  
Inclusive

Defendants.

Case No.:  
'04 CV 1367 J (RBB)

CIVIL COMPLAINT:  
DISCRIMINATORY PRACTICES IN  
PUBLIC ACCOMMODATIONS  
[42 U.S.C. 12182(a) ET. SEQ;  
CIVIL CODE 51, 52, 54, 54.1]

NEGLIGENCE  
[CIVIL CODE 1714(a), 2338,  
3333; EVIDENCE CODE 669(a)]

DEMAND FOR JURY TRIAL  
[F.R.Civ.P. rule 38(b);  
Civ.L.R. 38.1]

INTRODUCTION

Plaintiffs MANTIC ASHANTI'S CAUSE SUING ON BEHALF OF THEODORE  
A. PINNOCK AND ITS MEMBERS and THEODORE A. PINNOCK, An Individual,  
herein complain, by filing this Civil Complaint in accordance with  
rule 8 of the Federal Rules of Civil Procedure in the Judicial  
District of the United States District Court of the Southern  
District of California, that Defendants have in the past, and  
presently are, engaging in discriminatory practices against  
individuals with disabilities, specifically including minorities

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1 with disabilities. Plaintiffs allege this civil action and others  
2 substantial similar thereto are necessary to compel access  
3 compliance because empirical research on the effectiveness of  
4 Title III of the Americans with Disabilities Act indicates this  
5 Title has failed to achieve full and equal access simply by the  
6 executive branch of the Federal Government funding and promoting  
7 voluntary compliance efforts. Further, empirical research shows  
8 when individuals with disabilities give actual notice of potential  
9 access problems to places of public accommodation without a  
10 federal civil rights action, the public accommodations do not  
11 remove the access barriers. Therefore, Plaintiffs make the  
12 following allegations in this federal civil rights action:

13 **JURISDICTION AND VENUE**

14 1. The federal jurisdiction of this action is based on the  
15 Americans with Disabilities Act, 42 United States Code 12101-  
16 12102, 12181-12183 and 12201, et seq. Venue in the Judicial  
17 District of the United States District Court of the Southern  
18 District of California is in accordance with 28 U.S.C. § 1391(b)  
19 because a substantial part of Plaintiffs' claims arose within the  
20 Judicial District of the United States District Court of the  
21 Southern District of California.

22 **SUPPLEMENTAL JURISDICTION**

23 2. The Judicial District of the United States District Court of  
24 the Southern District of California has supplemental jurisdiction  
25 over the state claims as alleged in this Complaint pursuant to 28  
26 U.S.C. § 1367(a). The reason supplemental jurisdiction is proper  
27 in this action is because all the causes of action or claims  
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1 derived from federal law and those arising under state law, as  
2 herein alleged, arose from common nucleus of operative facts. The  
3 common nucleus of operative facts, include, but are not limited  
4 to, the incidents where Plaintiff's Member Theodore A. Pinnock was  
5 denied full and equal access to Defendants' facilities, goods,  
6 and/or services in violation of both federal and state laws when  
7 they attempted to enter, use, and/or exit Defendants' facilities  
8 as described below within this Complaint. Further, due to this  
9 denial of full and equal access, Theodore A. Pinnock and other  
10 persons with disabilities were injured. Based upon the said  
11 allegations, the state actions, as stated herein, are so related  
12 to the federal actions that they form part of the same case or  
13 controversy and the actions would ordinarily be expected to be  
14 tried in one judicial proceeding.

15 **NAMED DEFENDANTS AND NAMED PLAINTIFFS**

16 3. Defendants are, and, at all times mentioned herein, were, a  
17 business or corporation or franchise organized and existing and/or  
18 doing business under the laws of the State of California.  
19 Defendant RIVERA MOTEL is located at 372 Broadway, Chula Vista,  
20 California 91910. Plaintiffs are informed and believe and thereon  
21 allege that Defendant SWAN HEI YEN is the owner, operator, and/or  
22 doing business as RIVERA MOTEL. Plaintiffs are informed and  
23 believe and thereon allege that Defendant SWAN HEI YEN is also the  
24 owner, operator, and/or lessor of the property located at 372  
25 Broadway, Chula Vista, California 91910, Assessor Parcel Number  
26 567-090-22. Defendant SWAN HEI YEN is located at 372 Broadway,  
27 Chula Vista, California 91910. The words Plaintiffs" and  
28

1 "Plaintiff's Member" as used herein specifically include the  
2 organization MANTIC ASHANTI'S CAUSE, its Members, its member  
3 Theodore A. Pinnock and persons associated with its Members who  
4 accompanied Members to Defendants' facilities, as well as THEODORE  
5 A. PINNOCK, An Individual.

6 4. Defendants Does 1 through 10, were at all times relevant  
7 herein subsidiaries, employers, employees, agents, of RIVERA  
8 MOTEL; SWAN HEI YEN d.b.a. RIVERA MOTEL; and SWAN HEI YEN.

9 Plaintiffs are ignorant of the true names and capacities of  
10 Defendants sued herein as Does 1 through 10, inclusive, and  
11 therefore sues these Defendants by such fictitious names.

12 Plaintiffs will pray leave of the court to amend this complaint to  
13 allege the true names and capacities of the Does when ascertained.

14 5. Plaintiffs are informed and believe, and thereon allege, that  
15 Defendants and each of them herein were, at all times relevant to  
16 the action, the owner, lessor, lessee, franchiser, franchisee,  
17 general partner, limited partner, agent, employee, representing  
18 partner, or joint venturer of the remaining Defendants and were  
19 acting within the course and scope of that relationship.

20 Plaintiffs are further informed and believe, and thereon allege,  
21 that each of the Defendants herein gave consent to, ratified,  
22 and/or authorized the acts alleged herein to each of the remaining  
23 Defendants.

24 **CONCISE SET OF FACTS**

25 6. Plaintiff MANTIC ASHANTI'S CAUSE is an organization that  
26 advocates on the behalf of its members with disabilities when  
27 their civil rights and liberties have been violated. Plaintiff's  
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1 member THEODORE A. PINNOCK is a member of Plaintiff Organization  
2 and has an impairment in that he has Cerebral Palsy and due to  
3 this impairment he has learned to successfully operate a  
4 wheelchair.

5 7. On June 22, 2004, Plaintiff's member THEODORE A. PINNOCK went  
6 to RIVERA MOTEL facilities to utilize their goods and/or services.  
7 When Plaintiff's member patronized Defendants' RIVERA MOTEL  
8 facilities, he was unable to use and/or had difficulty using the  
9 public accommodations' disabled parking, exterior path of travel,  
10 entrance, office entrance, cashier counter, cashier window,  
11 guestroom, and guestroom entrance facilities at Defendants'  
12 business establishment because they failed to comply with ADA  
13 Access Guidelines For Buildings and Facilities (hereafter referred  
14 to as "ADAAG") and/or California's Title 24 Building Code  
15 Requirements. Defendants failed to remove access barriers within  
16 the disabled parking, exterior path of travel, entrance, office  
17 entrance, cashier counter, cashier window, guestroom, and  
18 guestroom entrance facilities of Defendants' RIVERA MOTEL  
19 establishment.  
20

21 8. Plaintiff's member personally experienced difficulty with  
22 said access barriers at Defendants' RIVERA MOTEL facilities. For  
23 example, the parking facility of Defendants' establishment is  
24 inaccessible. The entryway into the parking lot fails to have the  
25 required signage warning motorists that anyone illegally parking  
26 in a disabled parking space would be towed/fined or both. The  
27 parking facility has a total of sixteen (16) parking spaces,  
28 including one (1) disabled parking space. The existing disabled

1 parking space is a "regular" disabled parking space that is only  
2 fifteen feet (15') long. It is required that there is at least  
3 One (1) "van accessible" disabled parking space that is at least  
4 eighteen feet (18') long and nine feet (9') wide with an eight  
5 foot (8') wide access aisle.

6 9. The exterior path of travel of the Defendants' establishment  
7 is inaccessible. There fails to be a safe and accessible path of  
8 travel from the public sidewalk to the primary accessible  
9 entrance, as members of the disability community are forced to  
10 traverse through vehicular traffic without the benefit of a marked  
11 path of travel.

12 10. The front entrance to the Defendants' establishment is  
13 inaccessible, as it fails to have the required disability signage.

14 11. The entrance to the office is inaccessible, as it has a  
15 threshold that is an impermissible four inches (4") high. Changes  
16 in level greater than one half of an inch (1/2") are required to  
17 have a ramp.

18 12. The cashier counter and cashier window are both inaccessible,  
19 as they are forty-two inches (42") high, when the maximum height  
20 requirement is thirty-four inches (34").

21 13. The Defendants' establishment has twenty-two (22) Guestrooms,  
22 none of which are designated as "accessible" Guestrooms. If a  
23 hotel has between one and twenty-five (1 and 25) guestrooms, the  
24 hotel shall provide one (1) fully accessible guestroom. If a hotel  
25 has between one and twenty-five (1 and 25) guestroom, the hotel  
26 shall provide one (1) accessible guestrooms for members of the  
27 disability community who are hearing impaired. Defendants' hotel  
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1 fails to have the required accessible guestrooms. Further, all of  
2 the Defendants Guestrooms are inaccessible, as each room fails to  
3 have the required five-foot by five-foot (5'x 5") level landing in  
4 front of the Guestroom entrance door. Each of the Defendants'  
5 Guestrooms also has an impermissible three-inch (3") high  
6 threshold and fails to have the required ramp. Changes in level  
7 greater than one half of an inch (1/2") are required to have a  
8 ramp. Therefore, Plaintiff's member and Plaintiff Theodore A.  
9 Pinnock was completely denied access to any of the Guestrooms at  
10 the Defendants' RIVERA MOTEL establishment.

11 14. Pursuant to federal and state law, Defendants are required to  
12 remove barriers to their existing facilities. Further, Defendants  
13 had actual knowledge of their barrier removal duties under the  
14 Americans with Disabilities Act and the Civil Code before January  
15 26, 1992. Also, Defendants should have known that individuals  
16 with disabilities are not required to give notice to a  
17 governmental agency before filing suit alleging Defendants failed  
18 to remove architectural barriers.

19 15. Plaintiffs believe and herein allege Defendants' facilities  
20 have access violations not directly experienced by Plaintiff's  
21 Member which preclude or limit access by others with disabilities,  
22 including, but not limited to, Space Allowance and Reach Ranges,  
23 Accessible Route, Protruding Objects, Ground and Floor Surfaces,  
24 Parking and Passenger Loading Zones, Curb Ramps, Ramps, Stairs,  
25 Elevators, Platform Lifts (Wheelchair Lifts), Windows, Doors,  
26 Entrances, Drinking Fountains and Water Coolers, Water Closets,  
27 Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks, Storage,  
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1 Handrails, Grab Bars, and Controls and Operating Mechanisms,  
2 Alarms, Detectable Warnings, Signage, and Telephones. Accordingly,  
3 Plaintiffs allege Defendants are required to remove all  
4 architectural barriers, known or unknown. Also, Plaintiffs allege  
5 Defendants are required to utilize the ADA checklist for Readily  
6 Achievable Barrier Removal approved by the United States  
7 Department of Justice and created by Adaptive Environments.

8 16. Based on these facts, Plaintiffs allege Plaintiff's Member  
9 and Plaintiff Theodore A. Pinnock was discriminated against each  
10 time he patronized Defendants' establishments. Plaintiff's Member  
11 and Plaintiff Theodore A. Pinnock was extremely upset due to  
12 Defendants' conduct. Further, Plaintiff's Member and Plaintiff  
13 THEODORE A. PINNOCK experienced pain in his legs, back, arms,  
14 shoulders and wrists when he attempted to enter, use, and exit  
15 Defendants' RIVERA MOTEL establishment.

16 **WHAT CLAIMS ARE PLAINTIFFS ALLEGING AGAINST EACH NAMED DEFENDANT**

17 17. RIVERA MOTEL; SWAN HEI YEN d.b.a. RIVERA MOTEL; SWAN HEI YEN;  
18 and Does 1 through 10 will be referred to collectively hereinafter  
19 as "Defendants."

20 18. Plaintiffs aver that the Defendants are liable for the  
21 following claims as alleged below:

22 **DISCRIMINATORY PRACTICES IN PUBLIC ACCOMMODATIONS**

23 **FIRST CAUSE OF ACTION AGAINST ALL DEFENDANTS- Claims Under The**  
24 **Americans With Disabilities Act Of 1990**

25 **CLAIM I AGAINST ALL DEFENDANTS: Denial Of Full And Equal**  
26 **Access**

27 19. Based on the facts plead at ¶¶ 6-16 above and elsewhere in  
28

1 this complaint, Plaintiff's Member was denied full and equal  
2 access to Defendants' goods, services, facilities, privileges,  
3 advantages, or accommodations. Plaintiffs allege Defendants are a  
4 public accommodation owned, leased and/or operated by Defendants.  
5 Defendants' existing facilities and/or services failed to provide  
6 full and equal access to Defendants' facility as required by 42  
7 U.S.C. § 12182(a). Thus, Plaintiff's Member was subjected to  
8 discrimination in violation of 42 United States Code  
9 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because Plaintiff's  
10 Member was denied equal access to Defendants' existing facilities.

11 20. Plaintiff's member Theodore A. Pinnock has physical  
12 impairments as alleged in ¶ 6 above because his conditions affect  
13 one or more of the following body systems: neurological,  
14 musculoskeletal, special sense organs, and/or cardiovascular.  
15 Further, Plaintiff's member Theodore A. Pinnock's said physical  
16 impairments substantially limits one or more of the following  
17 major life activities: walking. In addition, Plaintiff's member  
18 Theodore A. Pinnock cannot perform one or more of the said major  
19 life activities in the manner, speed, and duration when compared  
20 to the average person. Moreover, Plaintiff's member Theodore A.  
21 Pinnock has a history of or has been classified as having a  
22 physical impairment as required by 42 U.S.C. § 12102(2)(A).

23 CLAIM II AGAINST ALL DEFENDANTS: Failure To Make Alterations  
24 In Such A Manner That The Altered Portions Of The Facility Are  
25 Readily Accessible And Usable By Individuals With Disabilities

26 21. Based on the facts plead at ¶¶ 6-16 above and elsewhere in  
27 this complaint, Plaintiff's Member Theodore A. Pinnock was denied  
28 full and equal access to Defendants' goods, services, facilities,

1 privileges, advantages, or accommodations within a public  
2 accommodation owned, leased, and/or operated by Defendants.  
3 Defendants altered their facility in a manner that affects or  
4 could affect the usability of the facility or a part of the  
5 facility after January 26, 1992. In performing the alteration,  
6 Defendants failed to make the alteration in such a manner that, to  
7 the maximum extent feasible, the altered portions of the facility  
8 are readily accessible to and usable by individuals with  
9 disabilities, including individuals who use wheelchairs, in  
10 violation of 42 U.S.C. §12183(a)(2).

11 22. Additionally, the Defendants undertook an alteration that  
12 affects or could affect the usability of or access to an area of  
13 the facility containing a primary function after January 26, 1992.  
14 Defendants further failed to make the alterations in such a manner  
15 that, to the maximum extent feasible, the path of travel to the  
16 altered area and the bathrooms, telephones, and drinking fountains  
17 serving the altered area, are readily accessible to and usable by  
18 individuals with disabilities in violation 42 U.S.C. §12183(a)(2).

19 23. Pursuant to 42 U.S.C. §12183(a), this failure to make the  
20 alterations in a manner that, to the maximum extent feasible, are  
21 readily accessible to and usable by individuals with disabilities  
22 constitutes discrimination for purposes of 42 U.S.C. §12183(a).  
23 Therefore, Defendants discriminated against Plaintiff's Member  
24 Theodore A. Pinnock in violation of 42 U.S.C. § 12182(a).

25 24. Thus, Plaintiff's Member Theodore A. Pinnock was subjected to  
26 discrimination in violation of 42 U.S.C. § 12183(a), 42 U.S.C.  
27 §12182(a) and 42 U.S.C. §12188 because said Member Theodore A.  
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1 Pinnock was denied equal access to Defendants' existing  
2 facilities.

3 CLAIM III AGAINST ALL DEFENDANTS: Failure To Remove  
4 Architectural Barriers

5 25. Based on the facts plead at ¶¶ 6-16 above and elsewhere in  
6 this complaint, Plaintiff's Member was denied full and equal  
7 access to Defendants' goods, services, facilities, privileges,  
8 advantages, or accommodations within a public accommodation owned,  
9 leased, and/or operated by Defendants. Defendants failed to  
10 remove barriers as required by 42 U.S.C. § 12182(a). Plaintiffs  
11 are informed, believe, and thus allege that architectural barriers  
12 which are structural in nature exist within the following physical  
13 elements of Defendants' facilities: Space Allowance and Reach  
14 Ranges, Accessible Route, Protruding Objects, Ground and Floor  
15 Surfaces, Parking and Passenger Loading Zones, Curb Ramps, Ramps,  
16 Stairs, Elevators, Platform Lifts (Wheelchair Lifts), Windows,  
17 Doors, Entrances, Drinking Fountains and Water Coolers, Water  
18 Closets, Toilet Stalls, Urinals, Lavatories and Mirrors, Sinks,  
19 Storage, Handrails, Grab Bars, and Controls and Operating  
20 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.  
21 Title III requires places of public accommodation to remove  
22 architectural barriers that are structural in nature to existing  
23 facilities. [See, 42 United States Code 12182(b)(2)(A)(iv).]  
24 Failure to remove such barriers and disparate treatment against a  
25 person who has a known association with a person with a disability  
26 are forms of discrimination. [See 42 United States Code  
27 12182(b)(2)(A)(iv).] Thus, Plaintiff's Member was subjected to  
28 discrimination in violation of 42 United States Code

1 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was  
2 denied equal access to Defendants' existing facilities.

3 CLAIM IV AGAINST ALL DEFENDANTS: Failure To Modify Practices,  
4 Policies And Procedures

5 26. Based on the facts plead at ¶¶ 6-16 above and elsewhere in  
6 this complaint, Defendants failed and refused to provide a  
7 reasonable alternative by modifying its practices, policies and  
8 procedures in that they failed to have a scheme, plan, or design  
9 to assist Plaintiff's Member and/or others similarly situated in  
10 entering and utilizing Defendants' services, as required by 42  
11 U.S.C. § 12188(a). Thus, said Member was subjected to  
12 discrimination in violation of 42 United States Code  
13 12182(b)(2)(A)(iv) and 42 U.S.C. § 12188 because said Member was  
14 denied equal access to Defendants' existing facilities.

15 27. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and  
16 III of Plaintiffs' First Cause Of Action above, and the facts  
17 elsewhere herein this complaint, Plaintiffs will suffer  
18 irreparable harm unless Defendants are ordered to remove  
19 architectural, non-architectural, and communication barriers at  
20 Defendants' public accommodation. Plaintiffs allege that  
21 Defendants' discriminatory conduct is capable of repetition, and  
22 this discriminatory repetition adversely impacts Plaintiffs and a  
23 substantial segment of the disability community. Plaintiffs  
24 allege there is a national public interest in requiring  
25 accessibility in places of public accommodation. Plaintiffs have  
26 no adequate remedy at law to redress the discriminatory conduct of  
27 Defendants. Plaintiff's Member desires to return to Defendants'  
28

1 places of business in the immediate future. Accordingly, the  
2 Plaintiffs allege that a structural or mandatory injunction is  
3 necessary to enjoin compliance with federal civil rights laws  
4 enacted for the benefit of individuals with disabilities.

5 28. WHEREFORE, Plaintiffs pray for judgment and relief as  
6 hereinafter set forth.

7  
8 SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS - CLAIMS UNDER  
9 CALIFORNIA ACCESSIBILITY LAWS

10 CLAIM I: Denial Of Full And Equal Access

11 29. Based on the facts plead at ¶¶ 6-16 above and elsewhere in  
12 this complaint, Plaintiff's Member was denied full and equal  
13 access to Defendants' goods, services, facilities, privileges,  
14 advantages, or accommodations within a public accommodation owned,  
15 leased, and/or operated by Defendants as required by Civil Code  
16 Sections 54 and 54.1. Defendants' facility violated California's  
17 Title 24 Accessible Building Code by failing to provide access to  
18 Defendants' facilities due to violations pertaining to the Space  
19 Allowance and Reach Ranges, Accessible Route, Protruding Objects,  
20 Ground and Floor Surfaces, Parking and Passenger Loading Zones,  
21 Curb Ramps, Ramps, Stairs, Elevators, Platform Lifts (Wheelchair  
22 Lifts), Windows, Doors, Entrances, Drinking Fountains and Water  
23 Coolers, Water Closets, Toilet Stalls, Urinals, Lavatories and  
24 Mirrors, Sinks, Storage, Handrails, Grab Bars, and Controls and  
25 Operating Mechanisms, Alarms, Detectable Warnings, Signage, and  
26 Telephones.

27 30. These violations denied Plaintiff's Member full and equal  
28 access to Defendants' facility. Thus, said Member was subjected

1 to discrimination pursuant to Civil Code §§ 51, 52, and 54.1  
2 because Plaintiff's Member was denied full, equal and safe access  
3 to Defendants' facility, causing severe emotional distress.

4 CLAIM II: Failure To Modify Practices, Policies And  
5 Procedures

6 31. Based on the facts plead at ¶¶ 6-16 above and elsewhere  
7 herein this complaint, Defendants failed and refused to provide a  
8 reasonable alternative by modifying its practices, policies, and  
9 procedures in that they failed to have a scheme, plan, or design  
10 to assist Plaintiff's Member and/or others similarly situated in  
11 entering and utilizing Defendants' services as required by Civil  
12 Code § 54.1. Thus, said Member was subjected to discrimination in  
13 violation of Civil Code § 54.1.

14 CLAIM III: Violation Of The Unruh Act

15 32. Based on the facts plead at ¶¶ 6-16 above and elsewhere  
16 herein this complaint and because Defendants violated the Civil  
17 Code § 51 by failing to comply with 42 United States Code §  
18 12182(b)(2)(A)(iv) and 42 U.S.C. § 12183(a)(2), Defendants did and  
19 continue to discriminate against Plaintiff's Member and persons  
20 similarly situated in violation of Civil Code §§ 51, 52, and 54.1.

21 33. Based on the facts plead at ¶¶ 6-16 above, Claims I, II, and  
22 III of Plaintiffs' Second Cause Of Action above, and the facts  
23 elsewhere herein this complaint, Plaintiffs will suffer  
24 irreparable harm unless Defendants are ordered to remove  
25 architectural, non-architectural, and communication barriers at  
26 Defendants' public accommodation. Plaintiffs allege that  
27 Defendants' discriminatory conduct is capable of repetition, and  
28

1 this discriminatory repetition adversely impacts Plaintiffs and a  
2 substantial segment of the disability community. Plaintiffs  
3 allege there is a state and national public interest in requiring  
4 accessibility in places of public accommodation. Plaintiffs have  
5 no adequate remedy at law to redress the discriminatory conduct of  
6 Defendants. Plaintiff's Member desires to return to Defendants'  
7 places of business in the immediate future. Accordingly, the  
8 Plaintiffs allege that a structural or mandatory injunction is  
9 necessary to enjoin compliance with state civil rights laws  
10 enacted for the benefit of individuals with disabilities.

11 34. Wherefore, Plaintiffs pray for damages and relief as  
12 hereinafter stated.

13 **Treble Damages Pursuant To Claims I, II, III Under The California**  
14 **Accessibility Laws**

15 35. Defendants, each of them respectively, at times prior to and  
16 including, the month of June, 2004, and continuing to the present  
17 time, knew that persons with physical disabilities were denied  
18 their rights of equal access to all portions of this public  
19 facility. Despite such knowledge, Defendants, and each of them,  
20 failed and refused to take steps to comply with the applicable  
21 access statutes; and despite knowledge of the resulting problems  
22 and denial of civil rights thereby suffered by Plaintiff's Member  
23 THEODORE A. PINNOCK and other similarly situated persons with  
24 disabilities. Defendants, and each of them, have failed and  
25 refused to take action to grant full and equal access to persons  
26 with physical disabilities in the respects complained of  
27 hereinabove. Defendants, and each of them, have carried out a  
28 course of conduct of refusing to respond to, or correct complaints



1 about, denial of disabled access and have refused to comply with  
2 their legal obligations to make Defendants' RIVERA MOTEL  
3 facilities accessible pursuant to the Americans With Disability  
4 Act Access Guidelines (ADAAG) and Title 24 of the California Code  
5 of Regulations (also known as the California Building Code). Such  
6 actions and continuing course of conduct by Defendants, and each  
7 of them, evidence despicable conduct in conscious disregard of the  
8 rights and/or safety of Plaintiff's Member and of other similarly  
9 situated persons, justifying an award of treble damages pursuant  
10 to sections 52(a) and 54.3(a) of the California Civil Code.

11 36. Defendants', and each of their, actions have also been  
12 oppressive to persons with physical disabilities and of other  
13 members of the public, and have evidenced actual or implied  
14 malicious intent toward those members of the public, such as  
15 Plaintiff's Member and other persons with physical disabilities  
16 who have been denied the proper access to which they are entitled  
17 by law. Further, Defendants', and each of their, refusals on a  
18 day-to-day basis to correct these problems evidence despicable  
19 conduct in conscious disregard for the rights of Plaintiff's  
20 Member THEODORE A. PINNOCK and other members of the public with  
21 physical disabilities.

22 37. Plaintiffs pray for an award of treble damages against  
23 Defendants, and each of them, pursuant to California Civil Code  
24 sections 52(a) and 54.3(a), in an amount sufficient to make a more  
25 profound example of Defendants and encourage owners, lessors, and  
26 operators of other public facilities from willful disregard of the  
27 rights of persons with disabilities. Plaintiffs do not know the  
28

1 financial worth of Defendants, or the amount of damages sufficient  
2 to accomplish the public purposes of section 52(a) of the  
3 California Civil Code and section 54.3 of the California Civil  
4 Code.

5 38. Wherefore, Plaintiffs pray for damages and relief as  
6 hereinafter stated.

7 PLAINTIFF THEODORE A. PINNOCK'S THIRD CAUSE OF ACTION AGAINST ALL  
8 DEFENDANTS- Negligence as to Plaintiff THEODORE A. PINNOCK only

9 39. Based on the facts plead at ¶¶ 6-16 above and elsewhere in  
10 this complaint, Defendants owed Plaintiff Theodore A. Pinnock a  
11 statutory duty to make their facility accessible and owed  
12 Plaintiff Theodore A. Pinnock a duty to keep Plaintiff Theodore A.  
13 Pinnock reasonably safe from known dangers and risks of harm.  
14 This said duty arises by virtue of legal duties proscribed by  
15 various federal and state statutes including, but not limited to,  
16 ADA, ADAAG, Civil Code 51, 52, 54, 54.1 and Title 24 of the  
17 California Administrative Code and applicable 1982 Uniform  
18 Building Code standards as amended.

19 40. Title III of the ADA mandates removal of architectural  
20 barriers and prohibits disability discrimination. As well,  
21 Defendants' facility, and other goods, services, and/or facilities  
22 provided to the public by Defendants are not accessible to and  
23 usable by persons with disabilities as required by Health and  
24 Safety Code § 19955 which requires private entities to make their  
25 facility accessible before and after remodeling, and to remove  
26 architectural barriers.

27 41. Therefore, Defendants engaged in discriminatory conduct in  
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1 that they failed to comply with known duties under the ADA, ADAAG,  
2 Civil Code 51, 52, 54, 54.1, ADAAG, and Title 24, and knew or  
3 should have known that their acts of nonfeasance would cause  
4 Plaintiff Theodore A. Pinnock emotional, bodily and personal  
5 injury. Plaintiff THEODORE A. PINNOCK alleges that there was  
6 bodily injury in this matter because when Plaintiff THEODORE A.  
7 PINNOCK attempted to enter, use, and exit Defendants'  
8 establishment, Plaintiff THEODORE A. PINNOCK experienced pain in  
9 his legs, back, arms, shoulders, and wrists. Plaintiffs further  
10 allege that such conduct was done in reckless disregard of the  
11 probability of said conduct causing Plaintiff Theodore A. Pinnock  
12 to suffer bodily or personal injury, anger, embarrassment,  
13 depression, anxiety, mortification, humiliation, distress, and  
14 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An  
15 Individual, alleges that such conduct caused THEODORE A. PINNOCK,  
16 An Individual, to suffer the injuries of mental and emotional  
17 distress, including, but not limited to, anger, embarrassment,  
18 depression, anxiety, mortification, humiliation, distress, and  
19 fear of physical injury. Plaintiff THEODORE A. PINNOCK, An  
20 Individual, additionally alleges that such conduct caused THEODORE  
21 A. PINNOCK, An Individual, to suffer damages as a result of these  
22 injuries.

23  
24 42. Wherefore, Plaintiffs pray for damages and relief as  
25 hereinafter stated.

26 DEMAND FOR JUDGMENT FOR RELIEF:

27 A. For general damages pursuant to Cal. Civil Code §§ 52, 54.3,  
28 3281, and 3333;

1 B. For \$4,000 in damages pursuant to Cal. Civil Code § 52 for  
2 each and every offense of Civil Code § 51, Title 24 of the  
3 California Building Code, ADA, and ADA Accessibility Guidelines;

4 C. In the alternative to the damages pursuant to Cal. Civil  
5 Code § 52 in Paragraph B above, for \$1,000 in damages pursuant to  
6 Cal. Civil Code § 54.3 for each and every offense of Civil Code §  
7 54.1, Title 24 of the California Building Code, ADA, and ADA  
8 Accessibility Guidelines;

9 D. For injunctive relief pursuant to 42 U.S.C. § 12188(a) and  
10 Cal. Civil Code § 55. Plaintiffs request this Court enjoin  
11 Defendants to remove all architectural barriers in, at, or on  
12 their facilities related to the following: Space Allowance and  
13 Reach Ranges, Accessible Route, Protruding Objects, Ground and  
14 Floor Surfaces, Parking and Passenger Loading Zones, Curb Ramps,  
15 Ramps, Stairs, Elevators, Platform Lifts (Wheelchair Lifts),  
16 Windows, Doors, Entrances, Drinking Fountains and Water Coolers,  
17 Water Closets, Toilet Stalls, Urinals, Lavatories and Mirrors,  
18 Sinks, Storage, Handrails, Grab Bars, and Controls and Operating  
19 Mechanisms, Alarms, Detectable Warnings, Signage, and Telephones.

20 E. For attorneys' fees pursuant to 42 U.S.C. § 1988, 42 U.S.C.  
21 § 12205, and Cal. Civil Code § 55;

22 F. For treble damages pursuant to Cal. Civil Code §§ 52(a),  
23 and 54.3(a);

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G. A Jury Trial and;

H. For such other further relief as the court deems proper.

Respectfully submitted:

**PINNOCK & WAKEFIELD, A.P.C.**

Dated: July 7, 2004

By: *Michelle Wakefield*  
MICHELLE L. WAKEFIELD, ESQ.  
DAVID C. WAKEFIELD, ESQ.  
Attorneys for Plaintiffs

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS  
 MANTIC ASHANTI'S CAUSE, SUING ON BEHALF OF  
 THEODORE A. PINNOCK AND ITS MEMBERS; And  
 THEODORE A. PINNOCK, An Individual

DEFENDANTS  
 RIVERA MOTEL; SWAN HEI YEN d.b.a. RIVERA MOTEL; SWAN  
 HEI YEN; And DOES 1 THROUGH 10  
 FILED  
 04 JUL -8 AM 8:43

CLERK, U.S. DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF San Diego  
 (EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT San Diego  
 (IN U.S. PLAINTIFF CASES ONLY)  
 NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)  
 Michelle L. Wakefield, Esq. SBN: 200424  
 David C. Wakefield, Esq. SBN: 185736  
 Pinnock & Wakefield, A.P.C.; 3033 Fifth Avenue, Suite 410  
 San Diego, CA 92103  
 Telephone: (619) 858-3671; Facsimile: (619) 858-3646

ATTORNEYS (IF KNOWN)  
 '04 CV 1367 J (RBB)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)  
 2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)  
 (For Diversity Cases Only)

	PT/DEF	PT/DEF
Citizen of This State	<input type="checkbox"/> 1 <input type="checkbox"/> Incorporated or Principal Place of Business in This State	<input type="checkbox"/> 4 <input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

42 U.S.C. Sections 12101-12102, 12181-12183, and 12201, Et. Seq.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reappointment
<input type="checkbox"/> Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury-Medical Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 625 Drug Related Seizure Of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 620 Copyrights	<input type="checkbox"/> 450 Commercial/CC Rates/etc.
<input type="checkbox"/> 150 Recovery of overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 640 RR & Truck	<input type="checkbox"/> 630 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 640 Trademark	<input type="checkbox"/> 470 Racketeer Influence and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 660 Other	<input type="checkbox"/> 861 HIA (1395b)	<input type="checkbox"/> 850 Securities/Commodities Exchange
<input type="checkbox"/> 160 Stockholders Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC
<input type="checkbox"/> Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 530 General	<input type="checkbox"/> 710 Fair Labor Standards Act 29 Labor/Mgmt Relations	<input type="checkbox"/> 863 DMC/DMM (405(g))	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 195 Contract Product Liability	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 892 Economic Stabilization, Act
<b>REAL PROPERTY</b>	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 790 Other Labor Litigation	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 555 Prisoner Conditions		<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 240 Tort to Land	<input checked="" type="checkbox"/> 440 Other Civil Rights				<input type="checkbox"/> 950 Constitutionality of State
<input type="checkbox"/> 245 Tort Product Liability					<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 290 All Other Real Property					

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

1 Original Proceeding  2 Removal from State Court  3 Remanded from Appellate Court  4 Reinstated or Reopened  5 Transferred from another district (specify)  6 Multidistrict Litigation  7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:  CHECK IF THIS IS A CLASS ACTION UNDER f.r.c.p. 23 DEMAND \$ To Be Determined At Trial Check YES only if demanded in complaint: JURY DEMAND:  YES  NO

VIII. RELATED CASE(S) IF ANY (See Instructions): JUDGE Docket Number

DATE July 7, 2004

SIGNATURE OF ATTORNEY OF RECORD  
 Michelle Wakefield

OR 105224 7/8/04 150<sup>00</sup>